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Proposals and contributions received from Governments

Mexico: proposed draft of the United Nations Convention against Corruption

With a view to contributing, with the United Nations and members of the international community, to a redoubling of efforts to combat corruption, the Government of Mexico has the honour to submit its proposal on substantive elements to be included in the future United Nations Convention against Corruption, on the understanding that Mexico reserves the right to adapt or amend the text of its proposal in order to improve it, provided that such changes are deemed appropriate.

United Nations Convention against Corruption

Article 1
Purpose

The purpose of this Convention is to promote international cooperation to deter, detect, combat and punish corruption. It also seeks to promote and strengthen the development of mechanisms necessary to ensure the effectiveness of measures and actions to punish acts of corruption in the exercise of public functions and acts associated with the exercise of such functions, as well as corruption among individuals.

Article 2
Use of terms

For the purposes of this Convention:

(a) "Public function" shall mean any temporary or permanent, paid or honorary activity performed by a natural person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy;

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(b) "Public official" shall mean any person or employee of the State or its agencies, including those who have been selected, appointed, commissioned or elected to perform activities or functions in the name of the State or in the service of the State, and who holds a legislative, administrative or judicial office, at any level of its hierarchy;

(c) "Foreign public official" shall mean any person who performs a public function or holds a position, post or commission of any kind for a foreign country, including for a public agency or public enterprise;

(d) "International civil servant" shall mean any person who performs a public function, whether such person is an official or holds a position, post or commission of any kind for an international organization;

(e) "International organization" shall mean a public, intergovernmental, private or non-governmental organization whose presence and sphere of activity include two or more States and which is situated in one of the States Parties to the Convention;

(f) "Property" shall mean assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate or relating to ownership or other rights pertaining to such assets;

(g) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with this Convention;

(h) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(i) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(j) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as set forth in article 9 [Criminalization of the laundering of proceeds of crime] of this Convention.

Article 3
Scope of application

1. This Convention shall not apply to cases in which an act of corruption is committed in one State, the alleged criminal is a national of that State and is present in the territory of that State and no other State is entitled to exercise its jurisdiction in accordance with article 18 [Jurisdiction], with the exception of the provisions of articles 15 [Mutual legal assistance], 22 [Collection, exchange and analysis of information on the nature of corruption], 23 [Training and technical assistance] and 24 [Preventive measures].

2. For the purposes of implementing this Convention, it shall not be necessary for the offences set forth in it to result in damage or harm to state property.

Article 4
Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5
Acts of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following acts of corruption:

(a) The solicitation or acceptance, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other undue benefit, such as a gift, favour or advantage for himself or herself or for another person or entity, or the promise to grant them, in exchange for any act or omission in the performance of his or her public functions;

(b) The promising, offering or granting, directly or indirectly, to a public official or a person who performs public functions, of any article of monetary value or other undue benefit, such as a gift, favour or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

(c) The intentional promising, offering or granting to a foreign public official, directly or indirectly, by its nationals or natural or legal persons who have habitual residence in its territory or are domiciled therein, of any article of monetary value or other undue benefit that are to his or her own advantage or to the advantage of another person or entity, such as a gift, favour or advantage, in exchange for which that official, in the performance of his and her public functions, performs or fails to perform any act in relation to an economic, financial or commercial transaction;

(d) The abuse of functions or any act or omission in the discharge of his or her functions by a public official, international civil servant or a person who performs public functions, for the purpose of obtaining illicit benefits for himself or herself or for a third party;

(e) The illicit enrichment or the increase in the assets of a public official that significantly exceeds his or her legitimate income during the performance of his or her functions and that he or she cannot reasonably justify;

(f) Trading in influence, understood as:

(i) The use of the ability of a public official to exercise improper influence on decision-making within or outside the government apparatus; or

(ii) The exercise of coercive influence on third parties for the purpose of acquiring an advantage for oneself or for third parties;

(g) The improper use by a public official or a person who performs public functions, for his or her own benefit or that of a third party, of any kind of classified or confidential information that that official or person who performs public functions has obtained because of or in the performance of his or her functions;

(h) The improper use by a public official or a person who performs public functions, for his or her own benefit or that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person who performs public functions has access because of or in the performance of his or her functions;

(i) Any act or omission by any person who, personally or through a third party, or acting as an intermediary, seeks to obtain a decision from a public authority whereby he or she illicitly obtains for himself or herself or for another person any benefit or gain;

(j) The diversion by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State or to an individual, that such official has received by virtue of his or her position for purposes of administration, custody or for other reasons;

(k) The soliciting, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other improper benefits or in quantities exceeding those established by law, as a tax or contribution, surcharge, revenue, interest, salary or remuneration.

2. The attempted commission or complicity in the commission of the offence referred to in paragraph 1 (c) of this article shall constitute an offence of the same degree, whether an attempt or complicity is involved in the bribing of a public official of a State Party.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences participation as the perpetrator, co-perpetrator, instigator, accomplice, abettor or in any other capacity in the commission, attempted commission, association with or conspiracy to commit any of the acts referred to in paragraph 1 of this article, as well as conduct by any person who, with knowledge of the aim of an act of corruption, takes an active part in organizing, managing, aiding, abetting, facilitating, authorizing or counselling such acts.

4. Each State Party shall establish custodial sanctions for acts of corruption established in accordance with this article, which shall take account of the seriousness of such acts.

5. When the commission of any of the offences referred to in paragraph 1 of this article requires proof of the knowledge, intent, aim, purpose or agreement for the commission of such offences, these may be inferred from objective factual circumstances.

Article 6

Progressive development and harmonization of national legislation

1. Each State Party shall take such measures as may be necessary to ensure that the instrument and the proceeds of the crime derived from the acts referred to in article 5 of this Convention or assets of equal value to such proceeds can be frozen or confiscated or that monetary penalties with similar effect are applied.

2. States Parties shall endeavour to establish and support auditing mechanisms in order to deter and detect corruption in public administration and impose additional civil or administrative sanctions against any public official who commits acts of corruption. Such sanctions shall include, inter alia, private or public disciplinary measures; private or public reprimand; suspension in position, post or commission; dismissal; economic sanctions; or temporary disqualification from holding positions, posts or commissions in public service.

3. Each State Party shall establish and support auditing mechanisms in order to deter and detect corruption outside public administration, in particular in the private sector in its relations with the Government, and shall impose additional civil or administrative sanctions against a person subject to sanctions for commission of the acts set forth in article 5 of this Convention.

4. States Parties shall endeavour to ensure that the statute of limitations period applicable to criminal proceedings or sanctions is doubled in cases of persons who, having committed an act of corruption, are outside the jurisdiction of a State Party, if for that reason it is not possible to institute criminal proceedings, conclude a trial or execute a sanction.

5. This Convention shall also apply, by mutual agreement between two or more States Parties, to any other acts of corruption that are not set forth in it.

6. For the purposes indicated in articles 5 [Acts of corruption] and 9 [Criminalization of the laundering of proceeds of crime] of this Convention, the fact that the property obtained or derived from an act of corruption has been intended for political purposes or the claim that an act of corruption has been committed for political reasons or aims shall not in themselves be sufficient ground for considering such an act a political offence or an ordinary offence related to a political offence.

Article 7
Corruption in the private sector

Each State Party shall take such measures as may be appropriate to deter and combat corruption in the private sector. To that end, each State Party shall, inter alia, establish as criminal offences the following conduct:

(a) The solicitation or acceptance by any natural person who works or provides services in entities of the private sector, directly or indirectly, of an undue advantage, for himself or herself or for another person, in order that such person act or refrain from acting in the exercise of his or her obligations in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector; and

(b) The intentional promise, offering or giving to a natural person who works or provides services in entities of the private sector, directly or indirectly, of any article of monetary value or other undue advantage, for himself or herself or for another person or entity, as a gift, favour, promise or advantage, in exchange for which that person performs or fails to perform any act in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector.

Article 8
Criminalization of obstruction of justice

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention.

2. Nothing in this article shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 9
Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) The acquisition, possession or use of property, knowing, at the moment such property is received, that it is the proceeds of crime;

(b) The administration, custody, disposal, exchange, conversion, deposit, surrender as a surety, transport, transfer, investment, alteration or destruction of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(c) The concealment or disguise of the true nature, source, location, disposition, movement, destination or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating, authorizing and counselling the commission of any of the offences established in accordance with this article;

(e) The acquisition, possession, use, administration, custody, disposal, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property that derives from or is the proceeds of crime if a person who is so obliged by virtue of his or her profession, position, post or commission does not take the necessary measures to ascertain the lawful origin of such property.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall include as predicate offences, as a minimum, the offences established in accordance with article 5 [Acts of corruption] of this Convention;

(b) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(c) For the purposes of paragraph 1 of this article, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations; and

(e) When the commission of any of the offences referred to in paragraph 1 of this article requires proof of the knowledge, intent, aim, purpose or agreement for the commission of such offences, these may be inferred from objective factual circumstances.

Article 10
Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions and for natural or legal persons engaged in professional or business activities, including non-profit organizations, particularly susceptible to money-laundering, within its competence, in order to deter and detect money-laundering mechanisms, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious or unusual transactions;

(b) Shall, without prejudice to article 15 [Mutual legal assistance] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering, including, where appropriate under domestic law, judicial authorities, have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, seizure, analysis and, where appropriate, dissemination of information received through reports of suspicious or unusual transactions, as potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 11
Accounting measures to combat the bribing of public officials

1. In order to combat effectively the bribing of foreign and international public officials by legal persons subject to their jurisdiction, each State Party shall take such measures as may be necessary to incorporate within its laws and regulations:

(a) The keeping and maintenance of books and records of accounts;

(b) The disclosure of financial statements and publication of accounting and auditing standards; and

(c) The prevention of articles of monetary value or gifts, favours or advantages granted in the commission of the offences set forth in article 5, paragraph 1 (c), of this Convention from being declared tax deductible and prohibition of the establishment of off-the-books accounts, the maintenance of double accounting systems or of inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents for the purpose of bribing foreign public officials or of concealing such bribery.

2. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such legal persons.

Article 12
Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, in accordance with principles of its domestic law, to establish the liability of a legal person situated in its territory or constituted in accordance with its legislation, when a person liable for its conduct or control commits, in such capacity, an offence set forth in this Convention. Such liability may be criminal, civil or administrative.

2. The liability referred to in the preceding paragraph shall be incurred without prejudice to the criminal liability of the natural persons who allegedly committed the offences.

3. Each State Party shall, in particular, ensure that legal persons held liable in accordance with paragraph 1 of this article are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions, including monetary sanctions.

Article 13
Confiscation and seizure

1. Each State Party shall adopt such legislative and other measures as may be necessary to regulate the administration and use of frozen, seized or confiscated property that is the proceeds of crime and shall ensure that these are administered by an official body established for that purpose. Such measures shall include standards relating to the return of secured property, which will remain at the disposal of the person who has a right to such property. Each State Party shall also consider measures relating to the administration and use of abandoned property as well as respect for the time limits that result in abandonment, [for example, six months,]

beginning from the notification of freezing, seizure or confiscation in the case of movable property and [one year] in the case of immovable property.

2. Each State Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

3. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

4. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. For the purposes of this article and article 14 [International cooperation for purposes of confiscation] of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized.

8. States Parties may consider the possibility of requiring that an offender accused or suspected of acts of corruption demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with principles of their domestic law and with the nature of the judicial and other proceedings.

9. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

Article 14
International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 13 [Confiscation and seizure], paragraph 2, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 13 [Confiscation and seizure], paragraph 2, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 13 [Confiscation and seizure], paragraph 2, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 13 [Confiscation and seizure], paragraph 2, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 15 [Mutual legal assistance] of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 15, paragraph 14, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, the State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 15
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in criminal and non-criminal investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 [Scope of application], granting, when appropriate, requests originating from authorities that, in accordance with its domestic law, have the power to investigate or try the acts of corruption set forth in this Convention with a view to obtaining evidence and carrying out other acts necessary to facilitate the prosecutions and proceedings pertaining to the investigation or trial of acts of corruption.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 12 [Liability of legal persons] of this Convention in the requesting State Party.

3. In accordance with applicable national legislation and the relevant agreements or arrangements that may be in force between them, States Parties shall afford one another the widest measure of assistance in the identifying, tracing, confiscating and seizing of property obtained or derived from the commission of offences established in accordance with this Convention, of property used in the commission of such offences or of proceeds of such property.

4. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and freezing, and seizures;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party; and

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

5. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

6. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

7. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

8. For the purposes of paragraph 7 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person; and

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

9. Unless the State Party from which a person is to be transferred in accordance with paragraphs 7 and 8 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which he or she is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

10. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. The central authorities shall be responsible for preparing and receiving the requests for assistance and cooperation to which this Convention refers.

11. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention.

12. A request for mutual assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

13. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party, which should preferably be specified in the request.

14. The requesting State Party shall provide prompt notification when it no longer requires the assistance requested.

15. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

16. The requesting State Party may request information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

19. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

20. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction; and

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

21. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

22. Reasons shall be given for any refusal of mutual legal assistance.

23. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

24. Before refusing a request pursuant to paragraph 20 of this article or postponing its execution pursuant to paragraph 23 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

25. Without prejudice to the application of paragraph 9 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

26. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

27. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public; and

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government

records, documents or information in its possession that under its domestic law are not available to the general public.

28. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 16

Disposal of confiscated proceeds of crime or property and return to the countries of origin or to countries or persons authorized to receive confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 13 [Confiscation and seizure] or 14 [International cooperation for purposes of confiscation], paragraph 1, of this Convention shall be disposed of by that State Party.

2. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish legal provisions that enable the central authorities or agencies with relevant responsibilities to share property constituting proceeds of crime with other States Parties to this Convention in cases when this would not entail damage to the property of those States.

3. The State Party that applies its own decisions with respect to confiscation, or those of another State Party, which have resulted in a final judgement with respect to property constituting proceeds of crime, shall dispose of such property in accordance with its own legislation. To the extent that its laws permit and in conditions that it deems appropriate, that State Party may transfer, in whole or in part, such property to another State Party that took part in the related investigation or judicial proceedings.

4. When acting on the request made by another State Party in accordance with articles 13 [Confiscation and seizure] and 14 [International cooperation for purposes of confiscation] of this Convention, States Parties may consider concluding agreements or arrangements on sharing among themselves, without prejudice to the provisions of paragraph 3 of this article, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with their domestic law or administrative procedures.

Article 17

Return of property to the country of origin in cases of damage to state property

1. Notwithstanding the provisions of articles 13, 14 and 16, of this Convention, each State Party shall adopt such measures as may be necessary to enable its central authorities or agencies with relevant responsibilities to return to the country of origin property constituting proceeds of crime that has been obtained to the detriment of that country.

2. In such cases, the property shall not be subject to the system of sharing between the requesting State and the requested State.

Article 18
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5 [Acts of corruption], 8 [Criminalization of obstruction of justice] and 9 [Criminalization of the laundering of proceeds of crime] of this Convention when:

(a) The offence is committed against the State Party; or

(b) The offence is committed by a national of that State Party; or

(c) The offence is committed in the territory of that State Party; or

(d) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time the offence is committed.

2. Subject to article 4 [Protection of sovereignty] of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 5 [Acts of corruption], paragraph 1 (c), of this Convention and is committed outside its territory and has, in the national territory of the State Party, the effect of an offence established in accordance with article 9 [Criminalization of the laundering of proceeds of crime], paragraph 1 (a), (b) or (c), of this Convention.

3. A State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her solely on the ground that he or she is one of its nationals.

4. The investigation and prosecution of the crime of corruption of a foreign public official or an international civil servant shall be subject to the applicable rules and principles of each State Party. They shall not be influenced by considerations of national economic interest, the potential effect on relations with another State or the identity of the natural or legal persons involved.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 19
Extradition

1. This article shall apply to the offences covered by this Convention and in cases where the person who is the subject of the request for extradition is located in

the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. For purposes of extradition, none of the offences set forth in the Convention shall be considered a political offence.

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

4. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

5. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

6. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

7. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

9. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

10. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 9 of this article.

11. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

12. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

13. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of those reasons.

14. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

15. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

16. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 20
Bank secrecy

1. The requested State Party shall not invoke bank secrecy as a ground for refusal to provide the assistance sought by the requesting State Party. The requested State Party shall apply this article in accordance with its domestic law, its procedural provisions or bilateral or multilateral agreements or arrangements with the requesting State Party.

2. The requesting State Party shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State Party.

3. States Parties shall strengthen their laws in order to prevent bank secrecy from being used to obstruct criminal or administrative investigations that relate to the subject of this Convention.

Article 21
Protection of witnesses

1. Each State Party shall take appropriate measures to safeguard and provide effective protection from potential retaliation or intimidation for witnesses, persons who report offences, informers and experts in judicial or administrative proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them. Each State Party shall adopt such measures as may be necessary to safeguard and protect persons who collaborate with the authorities, witnesses, persons who report offences, informers and experts who give testimony for the pursuit, prosecution and punishment of acts of corruption.

2. The provisions of this article shall also apply to victims who are natural persons insofar as they are witnesses.

Article 22
Collection, exchange and analysis of information on the nature of corruption

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, the circumstances in which corruption operates, as well as the groups, individuals and forms and means involved.

2. States Parties shall consider developing and sharing analytical expertise concerning acts of corruption with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. States Parties shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

4. States Parties shall afford one another the widest measure of mutual technical cooperation concerning the most effective ways and means of deterring, detecting, investigating and punishing acts of corruption. To that end, they shall promote the exchange of information on best practices and successful experience through agreements and meetings of their competent bodies and institutions with a view to publicizing mechanisms for administrative improvements and measures to combat corruption and shall devote special attention to ways and means of enabling civil society to participate in the fight against corruption.

5. States Parties shall consider establishing a centre for the dissemination of information on best practices to combat corruption. The centre would be responsible for requesting, receiving, collecting, administering, informing and disseminating successful experience in the fight against corruption. It would also be responsible for informing States Parties of the activities and progress in the measures referred to in paragraphs 1 to 4 of this article. States Parties shall consider making Mexico City the headquarters of this centre for the dissemination of information on best practices to combat corruption.

Article 23
Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Techniques used by persons suspected of involvement in offences covered by this Convention;

(c) Detection and monitoring of the movements of proceeds of crime, property or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(d) Collection of evidence;

(e) Methods used in combating corruption committed through the use of computers, telecommunication networks or other forms of modern technology; and

(f) Methods used in the protection of victims and witnesses, persons who report offences, informers and experts.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, where appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Article 24
Preventive measures

For the purposes set forth in article 1 of this Convention, States Parties shall consider the applicability of legislative, administrative or other measures within their own institutional systems to establish, maintain and strengthen:

(a) Integrity and to deter, detect and, where appropriate, sanction or punish corruption by public officials for acts or omissions that affect the legality, honesty, loyalty, impartiality and efficiency incumbent upon them in the exercise of their

position, post or commission. Such measures could include career civil service systems, mechanisms for the selection and hiring of public officials, tenure and seniority, fair and clear evaluations, awards and incentives, sanctions and fines, indicators for measuring results and so forth;

(b) The effective intervention of their authorities with a view to deterring, detecting and punishing corruption by public officials, including giving those authorities sufficient independence to dissuade officials from exerting any undue influence in the performance of their duties;

(c) Standards of conduct for the correct, honourable and proper performance of public functions. Those standards shall be intended to prevent conflicts of interest and to mandate the proper conservation and use of resources entrusted to public officials in the performance of their functions. The standards shall also establish measures and systems requiring public officials to report to competent authorities acts of corruption in the performance of public functions, as well as systems to promote the autonomy and independence of monitoring bodies. Such measures should help preserve the public's confidence in the integrity of civil servants and government processes;

(d) Codes of ethics and standards of conduct for the correct, honourable and proper performance of activities by individuals. Such standards shall be intended to prevent conflicts of interest, both between individuals and between individuals and public officials. The codes and standards shall also establish measures and systems that promote the reporting of illicit acts and corruption between individuals and in relations between individuals and public officials;

(e) Mechanisms to enforce those standards of conduct;

(f) Instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities;

(g) Systems for registering the income, assets and liabilities of persons who perform public functions in posts specified by law and, where appropriate, for making such registration public;

(h) Systems of government hiring and procurement of goods and services that ensure the openness, equity and efficiency of such systems. Those systems shall consider restricting, to the greatest extent possible, the conferring of discretionary authority on public officials with respect to the granting of administrative authorizations and resolutions, as well as mechanisms for the strict monitoring of existing discretionary authority;

(i) Government revenue collection and control systems that deter corruption, as well as mechanisms to provide effective and timely assistance to taxpayers regarding steps and measures to be taken in their dealings with the fiscal authorities;

(j) Mechanisms that promote transparency in the management of public affairs, including relations between the authorities and the general public, which provide, on a mandatory basis, information on the results of the steps and measures taken in dealings with them;

(k) Laws that deny favourable tax treatment for any individual or corporation for expenditures made in violation of the anti-corruption laws of the States Parties;

(l) Systems for safeguarding and protecting public officials and other persons who, in good faith, report acts of corruption, witnesses, informers and experts who participate in proceedings against individuals who have allegedly committed acts of corruption, including protection of their identities, in accordance with their constitutions and fundamental principles of their domestic law. Those systems shall also establish the necessary mechanisms for promoting confidence in public officials and for encouraging citizens to report acts of corruption;

(m) Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating acts of corruption;

(n) Deterrents to the bribing of national and foreign public officials, such as mechanisms to ensure that commercial companies and other types of association maintain books and records that, in reasonable detail, accurately reflect the acquisition and disposition of assets and have sufficient internal accounting controls to enable their officers to detect acts of corruption;

(o) Mechanisms for exchanging information on multinational and transnational corporations that may have committed illicit or improper acts or administrative offences during a government bidding process in any State Party;

(p) Effective mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption through, for example, the inclusion of civil society in decision-making processes, through monitoring committees, through its involvement in public bidding processes and through free access to information;

(q) Consideration of the adoption of further preventive measures that take into account the relationship between equitable compensation and probity in public service.

Article 25
Civil responsibility resulting from acts of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to ensure that natural or legal persons who suffer damages as a result of an act of corruption have the right to initiate civil action to obtain compensation for such damages.

2. Each State Party shall ensure that acts of corruption constitute sufficient grounds for annulling a contract, public bidding, concession or other legal acts.

Article 26
Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat and eradicate corruption and to promote and review the implementation of this Convention through a systematic follow-up programme.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall:

(a) Conduct annual multilateral evaluations for the periodic review of the implementation of this Convention;

(b) Make recommendations to improve its implementation;

(c) Facilitate the exchange of information among States Parties;

(d) Encourage the mobilization of voluntary contributions to finance the systematic follow-up programme; and

(e) Promote the establishment of a fund to assist least developed countries in the implementation of this Convention.

3. Each State Party shall provide the Conference of the Parties with the information it requires for the aforementioned systematic follow-up programme, concerning its programmes, plans, practices and results, as well as information on legislative and administrative measures adopted to implement this Convention.

Article 27
Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities set forth in article 26 [Conference of the Parties to the Convention] of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 26 [Conference of the Parties to the Convention], paragraph 3, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 28
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from [...] to [...] in [...]and thereafter at United Nations Headquarters in New York until [...].

2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open for accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 29
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [...] instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to this Convention after the deposit of the [...] instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State of the relevant instrument.

Article 30
Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

3. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party [...] days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

4. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 31
Denunciation

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 32
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.